THOMAS C. PLATT

vs.

THE PHILADELPHIA AND READING RAILROAD CO. ET AL.

Argument of Nathan Bijur, Counsel for Isaac L. Rice, in the U. S. Circuit Court, Philadelphia, Dec. 23, 1893.

C. G. Burgoyne, Walker and Centre Sts., New York.

THOS. C. PLATT

vs.

THE PHILADELPHIA AND READING R. R. CO. ET AL.

Closing argument of Nathan Bijur, counsel for Isaac L. Rice, on the hearing for leave to intervene, upon motion made (owing to the illness of Hon. Geo. M. Dallas) before Hon. William Butler, Justice of the United States District Court, sitting in the Circuit Court of the United States for the Eastern District of Pennsylvania, at Philadelphia, December 23d, 1893.

After Mr. McMurtrie, counsel for the Pennsylvania Company for Insurance on Lives and Granting Annuities, trustee under the general and income mortgages, had spoken, vehemently deprecating the election of Mr. Rice to the presidency, and advocating that of Mr. Harris, Mr. Bijur said :

May it please the Court : I thank Mr. McMurtrie for having given me the opportunity to present to you one of the first considerations with which I began, and which I now beg to urge upon you. Here is the counsel for the trustee dictating to the stockholders whom they shall elect to the presidency of the Reading Railroad Company. If that is what the trustee

has been appointed for under the general mortgage and preference income mortgages, I do not know it. It is not my understanding of what a trustee under a mortgage is supposed to do. If, furthermore, the holders of hundreds of thousands of shares here and abroad think that Mr. Rice is or is not a fit candidate for the presidency, that is their business, and I suppose if they nominate him, it is not a crime under the United States Statutes, or any other statutes that I know of. Suffice it to say that this bill was prepared in its draft form just three months ago, and that, had I had my health and the use of my eyes, it would have been filed two and one-half months ago. Since Mr. Rice discovered the irregularities of which we complain in our petition, he has been unceasing in his efforts to have them corrected. He resigned his position with the company—and I speak of this to answer the charge of laches—he resigned his position (as we learn from the answer such a splendid salaried office of the company), without a thought, the moment he found that the Boston and Maine and New York and New England stock speculations were being approved by the Receivers. He so stated in his letter to the president.

THESE are great events, and even when they move with speed that speed has a certain slowness. When we first had the opportunity of appearing in Court we came before the Court in the application for permission to issue Receivers' certificates, and urged all these matters. Judge DALLAS decided that, on that application, they were not material; and should be brought before the Court, if at all, in a separate application. We endeavored to secure action from this Court and from other Courts in the matter of the Lehigh Valley dividend, but through certain considerations which I need not advert to here—in part the refusal of the trustee to act—in large part the fact that we were uninformed as to the affairs of the company, because we did not have any accounts, and the accounts were not filed monthly, as the order appointing the Re-

ceivers required,—we were unable to procure an order. From that time on began the effort on my part, as the representative not of Mr. Rice alone, but of the holders of millions of bonds in New York, who approve of what he is doing to-day, and who are to-day as much in the Court as he is—he is but a type—on behalf of those bondholders I tried to get the trustee to bring about what I am trying to bring about to-day—a ventilation of the affairs of this company before the Court; and the trustee would not act, and when I found out that the trustee would not act I started to act, and that is what I am doing now.

THE COURT: Whom do you allude to when you speak of the trustee?

MR. BIJUR: The trustee of the general and income mortgages.

MR. MCMURTRIE: You will have to wait for our answer. I believe, my colleague tells me, we have never been asked, but we will have the answer in as soon as we can read that voluminous correspondence which we cannot exactly understand.

MR. BIJUR: Whether our requests were couched in proper form or not I cannot decide, but so far as our personal acts and our personal motives are concerned, we have never hesitated for a moment. Mr. Rice has published statements over his name, and the only difference I can find between the statements published over his name and the statements published over Mr. Harris' name is that Mr. Harris' were paid for as advertising and Mr. Rice's were not, but they both have been published in the newspapers, and I wish to ask now, and it is one of the averments in the bill—

MR. DICKSON: You do not mean to say Mr. Harris has ever published anything in reply to Mr. Rice?

MR. BIJUR: I did not say anything about a reply by Mr. Harris. I say Mr. Harris has published statements about the Philadelphia and Reading Railroad Company, and somebody has paid for the advertising, and Mr. Rice has published statements about the Philadelphia and Reading Railroad Company and nobody has paid

for the advertising, and that is the only difference between the two.

Now, so far as this bill is concerned, I think I have put myself clearly and unmistakably on record before this Court as to the motive with which it is brought, and the reason why it is brought to-day.

But I do object most seriously to this effort, which I foresaw and which I knew would be dragged into this controversy, and regarding which I first addressed you—this effort to belittle Mr. Rice and aggrandize and elevate the gentlemen who are to-day in control of the Reading Railroad Company. That has nothing to do with this issue. Mr. Rice might be in jail, but if he owns 100 Philadelphia and Reading Railroad Company bonds, he is entitled to his legal rights. That is what our courts are established for, I thank God. It is not a question of whether Mr. Rice has 50 bonds, or a question of whether he has 100 bonds. The issue that these gentlemen are trying to make before your Honor is the issue whether Mr. Rice shall be president of the Philadelphia and Reading Railroad Company. Nobody but the stockholders can decide that. They should not be interfered with. They should have nothing to do with this proceeding. *We* are not bringing them into it.

THESE gentlemen of whom we complain are Receivers. As I understand it the fundamental principle of a Receivership is this, that the receiver is the servant of the Court and that the trust estate is confided to the hands of the Court for administration under its constant watchfulness and unceasing care. The question which we desire to present here is whether or not these Receivers have properly administered the great trust confided to them, and the fact whether Mr. Issac L. Rice got $25,000 or $250,000 salary per annum has nothing to do with it. Whether he rendered a report to the trustee or did not render a report to the trustee has absolutely nothing to do with it; and to prove to your Honor the hollowness and the sham of this sort of rubbish in an answer, let me read you this:

" Under date of April 3d, 1893, he made two reports to the trustee in reference to the purchase of shares of the Boston and Maine and New York and New England. The information therein contained was mostly supplied by officials of the company, and the accounts were prepared and furnished to him by the accounting officers." Where on earth should a man who is investigating the affairs of the Philadelphia and Reading Railroad Company go for information, if not to the officers? Mr. Rice admits that he got his information from the officers. Mr. Rice is proud that he got his information from the officers. He did not do as Mr. Welsh does, I see from this answer. He did not go to the witnesses on the other side and get his information. Had Mr. Welsh gone to the officers of the company, the information he would have had as to the Prince transaction would have been different.

Now, may it please the Court, I do not like to speak very much about that personal issue. I refer to but one other item in this answer as a type, and that is this: " The respondents are informed and believe that the petitioner has boasted that by the purchase of proxies he could acquire control by the expenditure of a comparatively small sum without being obliged to purchase or own the shares." Mr. Rice boasted that he could purchase proxies of the Philadelphia and Reading Railroad Company stockholders! Now, I do not know what on earth that has to do with the question whether the Receivers properly administered the trust confided to them; but it is an averment that Mr. Rice has boasted that he could commit what in our State is a misdemeanor. I hold in my hand an article which Mr. Rice wrote in March of 1889 in the " Forum," entitled " Bribery in Railroad Elections," where this very thing was publicly condemned by him in unmeasured terms—this purchase of proxies. It was written by Mr. Rice after he had made a determined fight at an election of the Richmond Terminal Company on the basis that proxies should never be bought. He made an appeal to the Stock Exchange of our

city. He sent this article to Senators and Assemblymen of our State in the Legislature, and I will not boast about the result, but we have a good, clear statute now.

MR. DICKSON: Could anything be more absolutely relevant? You had blamed them for having established a voting trust as being some thing which is very iniquitous. They answer to that that the subscribers insisted as a condition of their subscriptions that a voting trust should be established. Their reasons for so doing are obvious enough, as the shares of the company were selling at a small figure, and control of the company could have been obtained by the advance of a sum quite inconsiderable relative to the total assets of the company. The stock of this company last year was down as low as six dollars a share.

MR. BIJUR: That is quite true, and Mr. Dickson knows it was Mr. Rice's suggestion, in consultation with Mr. Drexel, to make a voting trust, in which all bonds and all stock of the company should have a vote under a system of registry. Mr. Rice did not boast that he could buy proxies, and in this as in many other things, Mr. Rice suggested what might very well have been carried out in the affairs of this company. I do not want to retaliate with technicalities, but I should like to see the man that heard Mr. Rice make that boast. Mr. Rice is within this jurisdiction, by the way. He lives here. If anything is wanted of him in this jurisdiction, he is always on hand. I trust, the gentleman that heard him boast, will be equally on hand. I may remark this, however, to your Honor, that in the answer to a petition in a mandamus proceeding in the Common Pleas Court here Mr. Taylor and Mr. Harris swore to an answer wherein they said that Mr. Rice had only *declared* that he could purchase the proxies, and I have no doubt both Mr. Rice and Mr. Drexel, and probably Mr. Dickson and Mr. Welsh, have often said that. That was one reason for discussing the voting trust. That is not *boasting* that he could do it. I think the Court

appreciates the very important difference between *declaring* that one can do a thing, as a basis for argument, and *boasting* that one can do a thing, as a threat to accomplish a misdemeanor.

Now, I have endeavored in the preparation of this petition to follow out a clear line, which, notwithstanding the fact that I am physically rather tired, I have tried to present to the Court this morning in my opening. The affairs are complicated. They cover transactions involving tens of millions of dollars. They cover a long period of time, but I think we have so tabulated the matters of which we complain in the petition that they are clear to every one who will read the petition, and the accuracy of the document, covering some twenty-nine pages of printed matter in addition to the exhibits, is certainly well vouched for by the fact that my learned friend here has nothing to complain of but two little statements in two little paragraphs about two comparatively insignificant items which were put in as types of the general business of the company, and have nothing to do with the main causes of our complaint. If Mr. Dickson wants to know upon what kind of information and belief we allege that discrimination is still being exercised in favor of the Lehigh Valley, Mr. Dickson knows, as everybody knows here in Philadelphia (it has been published far and wide), that the milk dealers have been complaining in mass meeting of that discrimination. That is one example of our evidence if you would like to have it. Furthermore, how it is possible for a man to be the general manager of two competing companies at the same time—is one of the things which perhaps it takes a very experienced railroad man to understand. I am taking these few disjointed matters so as to get them out of the way. I wish to say, as to Mr. Wilbur, that nothing could be more erroneous than the impression conveyed by what my learned friend said. It would mean that we practically had reflected upon the discretion of the Judge, Hon. GEORGE M. DALLAS, in appointing Mr. Wilbur. No such thing

was ever dreamt of by us. When Mr. Wilbur was appointed one of the Receivers of the Philadelphia and Reading Railroad Company neither Judge DALLAS nor any other man outside of the Philadelphia and Reading Railroad Company knew that the Lehigh Valley had been sucking the lifeblood out of the Reading to the tune of a million and a half of dollars in that year. There was absolutely no reason why the president of a leased line which was regarded as a great feeder, and which, in the annual report of the company published but one month before the receivership, had been declared to have given the Reading a million dollars profit, should not be made a co-Receiver of the Philadelphia and Reading Railroad Company. But when we learn that the very opposite was the fact, and that there was a "trifling difference" of two and a half million dollars in those accounts between what the annual reports of both the Lehigh Valley and Philadelphia and Reading Railroad Companies stated, we have grave doubt whether a man who represented a drain upon the company should remain a Receiver. If he represented the Lehigh Valley he could not very well at the same time be representing the Philadelphia and Reading. We leave that as it stands, without comment.

Now, as to the answer, I have found, may it please the Court, that this answer, except in those one or two instances which Mr. Dickson has laid such stress upon, and in regard to which I would not for a moment desire to controvert an exact statement of fact on his part, because the matters are much more within his knowledge than ours, and because the matters are of very small importance—except for those, your Honor will not find a direct denial of fact, a direct traversing of averment, or what I may term, though it is not strictly technical in equity, a "confession and avoidance." In answer to the plaintiff's averments, which I will leave to your Honor to read for their clearness and for their directness, we have a long-mixed story. In order to criticise that answer, I have found it necessary to analyze

it ; and, though I was prepared to argue this last Tuesday, when the answer had been in my hand but two days, and have not practically had any more time since, for I have been traveling, I present that analysis to the Court as positively proving that our grounds of complaint are, I think I can say, absolutely good, but certainly that our action here is very justifiable.

THIS answer is based upon certain theories in regard to a receivership which are not our theories. We may be wrong, but on that point we desire the ruling of the Court. In the first place, this property after it was once confided to the care of these Receivers has been treated, and I say this with no malice, as a sort of personal property of certain gentlemen in Philadelphia. I have not injected the names. They appear in the answer. Mr. Welsh is one of them. I do not know the others. It is none of my business. I do not care. But we find Mr. Welsh does this, Mr. Welsh does that, and that settles it ; and we are astounded to find that the late Mr. A. J. Drexel had invited Mr. Harris to become president of the Philadelphia and Reading Railroad Company. Mr. A. J. Drexel never invited Mr. Harris to become president of the Philadelphia and Reading Railroad Company. Mr. A. J. Drexel never would have permitted himself to think of usurping the functions either of the Court or of the Board of Managers, and whatever approval he may have given to the election of Mr. Harris by the Board of Managers is a matter which is not for discussion here ; but one thing is sure--Mr. Drexel never invited Mr. Harris to become president of that road. Yet the answer says so.

MR. DICKSON : That is within my own knowledge.

MR. BIJUR : Then I am very sorry. Now, it follows from that view that when a security holder of the company appears in Court to complain of the administration of the property he is treated not only with contempt, he is treated with insolence. He is an intruder. He is poaching upon a private preserve. But where I learned law, the bondholders and the stockholders of a

company were considered its owners, and the Court has never failed to recognize itself as their trustee; and when Mr. Rice comes here and without personal motives, for he cannot gain by this personally, asks that the administration of this trust shall be rectified by the Court, see what he is told. All this rubbish about his past history, but no answer to his charges.

Now, another natural result flows from that view. The Court appointed these gentlemen. They have the property. There is no need of the Court any further. In their graciousness now and then they ask the Court for a ruling, when, as in the recent case with the Finance Company, or, as in the case with the Receivers' certicatates, some creditor or some intended creditor will not take an instrument unless it has the seal of the approval of the Court. But to ask the advice of the Court—to ask the instructions of the Court on the great issues which are constantly arising in the administration of this property—oh, no. They ask the advice of Mr. John G. Johnson and of Mr. Samuel Dickson—excellent lawyers—but we think they might have asked, and we want now to ask, the opinion of the United States Circuit Court for the Eastern District of Pennsylvania.

Collaterally with this, your Honor will find another view, viz., that where there is any doubt in a case against the Reading, they always let the Reading take the loss. There was a doubt whether the Reading was liable on the Boston and Maine account that involved the acceptance of a loss of $600,000. It did not by any means involve so small a matter as Mr. McMurtrie would have your Honor believe—that here were collaterals, the money of the Reading Railroad Company, millions of miles away, and nobody could find them. It was nothing of the kind. The State of Massachusetts is very near the State of Pennsylvania, and there are plenty of lawyers in the State of Massachusetts. Mr. Prince did not have such a vast mass of collateral, not at all. Mr. Prince by this

contract would have received $460,000 cash, and he would have surrendered $350,000 collateral trust bonds, which were worth, according to the idea of Mr. Johnson, and I think Mr. Dickson agreed with him, only 60 cents on the dollar. Where was Mr. Prince's whip hand? Then we are told that those 350 bonds had to be brought into the reorganization, but they did not have to be. It was suggested by a number of gentlemen—I do not like to bring Mr. Drexel's name into this unnecessarily, but it is here now. Mr. Drexel, I understand, said, "Bonds can be reserved until that matter is settled." Why not? There are plenty of bonds and prior liens outstanding every time a mortgage is issued to take them up. The company or Receivers chose, without asking the advice of the Court, to sacrifice what we consider the plainest dictates of honesty and the most absolute rules of business sense, not to speak of law, by accepting this outrageous speculation, and all the loss incurred in it, rather than to reserve 350 bonds of the new loan; and the worst of it is that the plan never succeeded, and in large part it was that very thing that killed it. Mr. Harris came into the presidency when Mr. McLeod retired, and if Mr. Harris stands for anything as Receiver or as president, he stands as a protest against the methods of Mr. McLeod. It was that which caused him to be welcomed by everybody in the presidency, and it was his abandonment of that line which caused the condemnation of his plan by the security holders.

We have the same thing with the New York and New England stock transactions. Why, they say "it was a mere exchange of cash for securities." But it was not a mere exchange. Here are Mr. Taylor and Mr. Church, two of the oldest employees of the company, men that have been with it from childhood. They knew what they were doing when they gave those receipts, when they wrote those letters. I do not plead any legal technicality, but Mr. Ervin, according to their own view, did act on one the letters, which told him the account had been accepted, and he sold

500 shares of stock under it. Does not that make a binding contract; an order of the Receivers executed, and the execution of the order accepted?

And then those other receipts which your Honor will see annexed. Why, that account was as fully accepted and ratified as it could be by a thousand legal instruments. I do not know what the Receivers intended to do, but what they did do is very plain, and what does that mean? It means this: that the Philadelphia and Reading Railroad Company, or any railroad in the State of Pennsylvania, can go into the brokerage office of Tom, Dick or Harry, from Texas to Wisconsin and from Maine to Oregon, and speculate—speculate in shares of stock—sell them short, and buy them, and do it again. Then it may sell its own securities short—and when Receivers are appointed for the company, why, the statute authorized all that kind of speculation! and this resolution of December 24 constitutes the attempt on the part of the Board of Managers to adopt these transactions as the company's! which principles and which facts I am indeed not here to admit, and I think your Honor will agree with me. Receivers are appointed and have to do that? They have to approve of those principles? They have to say that was all properly done, and cannot raise their voices because these people have collateral of the company? Why, the stockholders and security holders of the Philadelphia and Reading Railroad Company, so far as I know, would rather lose a good deal of money than have any such principle adopted in the administration of the affairs of this great corporation. But that is only part of the explanation. There are more explanations of this remarkable transaction. One of the other explanations is that Mr. Prince came here and negotiated about it. I do not know why anybody should have negotiated with Mr. Prince about it. He had broken his agreement. According to our view of the law and facts, the Philadelphia and Reading Railroad Company did not have anything to do with this transaction anyhow. But he came here

and negotiated. Then he went off and sold the Boston and Maine stock, sold it just off-hand, $4,000,000 worth, found a buyer over night. Nobody knows who the buyer is! Nobody seems to care! Nobody seems to worry much about the price and the manner in which it was sold, but it was just sold. Then he finds the balance due him is two hundred and sixty odd thousand dollars. Then he came along with his claim for a commission of $220,000, and why does he get that claim for commission, notwithstanding all the other irregularities in the business? He has that allowed to him because he comes with his attorney, Mr. Ledyard, of New York, and says he can produce three witnesses to the effect that Mr. McLeod made a contract with Mr. Prince for that commission. Nobody doubts that Mr. Prince broke his whole contract with Mr. McLeod. Whether it was the Reading Railroad Company's contract or anybody else's, that contract was broken because Mr. Prince did not buy the shares he agreed to buy, and Mr. Johnson said so, too. As all the evidence in the prior proceedings has shown, and as the answer itself admits, Mr. Prince had broken the contract, but he comes now to claim $220,000, and he says he can produce three witnesses who will swear that there was a contract for that commission with Mr. McLeod. The Receivers of the company do not go to the sources of information that Mr. Rice had. Oh, no. They must go outside. They come to the enemies of the company. They come to men who have claims against the company, and ask their witnesses. That is the way to get facts! That is the way they know of that proceeding! And so these three witnesses, who never appear, who are simply men that are said to be witnesses, govern this question; and because they would say that Mr. Prince had a contract *for a commission of* $220,000, the Reading Receivers gave him $186,000 *as the actual expense of carrying the account.* Why, that is very clear! See how simple the answer is—but I cannot understand it.

It seems to me that if those Receivers had desired

to make a clean and clear-cut case of their administration of this matter, they would, on the very grave doubt—I will put it mildly—existing, as to the liability of the company, have brought this matter before the Court for instructions. They should have repudiated all liability, and they should have learned from the Court what its opinion might have been as to the propriety of bringing suit or not. They would not be waiting to-day to find out whether the collateral redeemed under those remarkable circumstances belongs to the Receiver or belongs to somebody else. As to the remarkable theory that was advanced by Judge PAXSON in regard to that collateral on the previous hearing I wish to say nothing, *i. e.*, that the Receivers were "subrogated" to the rights of the Reading—took Reading money and redeemed the collateral from Ervin and Prince and were "subrogated" to the rights of the Reading in these securities!

Now, your Honor will observe that I am placed in a very peculiar position in this matter, that of pleading the Reading's cause, while the Receivers and their counsel are pleading the cause of Mr. Prince and Mr. Ervin, who had claims against the Reading, and of showing how clear it is that the Reading was liable on those, although they never asked the Court about it. They are here to state this proposition, that the Reading Railroad Company could buy these stocks, in what is nothing but a gambling transaction, on simple margin anywhere. The Reading never bought it like the other properties have been bought. Everybody can see that. Everybody knows it. The company could sell short, could ratify the account, of which the short sales are absolutely and essentially a a part, and then, without asking the instruction of the Court, the Receivers can accept those sales, and that is the end of the transaction, and that is the way this trust should be administered!

I wish to say a word as to those short sales. Mr. Dickson has said something about $36,000 not being the result of short sales, and has somewhat indig-

nantly repudiated it, and all that kind of thing. Now, we have pleaded in our petition, and I see it has evidently been very carefully read, that this $36,000 was a pretended profit resulting from short sales by or on behalf of the company of its own securities, and the answer—there is no need of my finding the exact place—says no such sales were made by or on behalf of the company. That may be. They were made by or on behalf of somebody else, and the company got the benefit of them afterward. That is a very fine distinction without a moral difference, and I appeal to your Honor to put the stigma of condemnation upon the claim, for one moment, that the Reading Railroad or any other railroad in this State can so speculate, and that when Receivers are appointed they should appear in this Court anxious to adopt for the Philadelphia and Reading Railroad Company the losses which those speculations have brought about.

I proceed to the next division of this analysis, and that is that the obligations of a mortgage, or the obligations of a contract, are, after all, comparatively small matters. Your Honor has heard the very able and the very plausible argument of Mr. Dickson, but very little was said by him about the income mortgage bonds. Now, so far from Mr. Dickson having called my attention to a sentence in them, this sentence or provision in the income mortgage bonds has engrossed my attention a great deal, and I wish it had more engrossed the attention of my learned friend, Mr. Dickson, and of the Receivers, for this sentence reads as follows: "The said net earnings, as above defined or described"—which means net earnings after paying operating expenses, &c.—"shall not be diminished, except the surplus thereof remaining in any year after the payment in full of said five per cent. per annum upon the bonds hereby secured, by reason of any expenditure by the railroad company for any purpose not above mentioned, nor shall the fixed charges include any additional fixed or other charges created subsequent hereto." That is a pretty plain pro-

vision. That is one of the provisions of the mortgage under which these Receivers were appointed. Now, how have they treated the mortgage? We have another principle of the answer which comes in as co-operative or cross-operative at this point. That is that, whenever you say anything against the Lehigh Valley, you must be abused, and Lehigh Valley must be defended. That is another principle of this answer. Now, we have neither anything for nor against the Lehigh Valley Company. Neither I nor anybody I have ever known in my life has ever held or bought or sold short a share of stock or a bond or anything else connected with the Lehigh Valley Railroad Company. In fact until the Lehigh Valley Railroad Company was leased by the Philadelphia and Reading Railroad Company people in New York were not specially interested in Lehigh Valley. So we have nothing against the Lehigh Valley Railroad Company at all. But we found out when we appeared in May and June on this Receivers' certificate application, that the Lehigh Valley Railroad Company was taking Reading money, and Mr. Harris said they had had $636,000 worth of it up to date at that time; but I see that this answer says Mr. Harris was wrong, and they had had more of it up to that time. I think, according to the answer, the amount up to that time was considerably more, seven or eight hundred thousand dollars, and we naturally objected, and those were the objections that were ruled by Judge DALLAS not to be material to that issue. But we brought this matter constantly and persistently to the attention of the Receivers, and to the attention of their counsel, and to the attention of the trustee. They said, " Well, that income mortgage probably means the income shall not be diminished, but you must wait until the end of the year, and then, if the Lehigh Valley makes a profit, the Reading will get it, and if it makes a loss the Reading gets the loss, too." Meanwhile, I suppose, the income bondholders just take their chances. I shall not advert to the way that that worked out, and the Reading has the loss, and the Lehigh Valley

has the money, but here was a plain infraction of the provision of the mortgage. This mortgage says that the said net earnings shall not be diminished by reason of any expenditure incurred subsequent to the date of this mortgage, and the Lehigh Valley lease was made four years subsequent to it, and yet the Receivers were quietly paying moneys of this company out, and never a word to anybody. It was Mr. Rice and not the Receivers that made known both to the Court and the security holders the fact that the Lehigh Valley had in the past year cost the Reading a million and a half. That million and a half figured by the Company's own accountants also seems to be wrong. Now they say $1,400,000. That is the way these figures change in a kaleidoscopic way.

But what is this case? I desire to bring ourselves thoroughly within the rule in 145 U. S., viz., that the Receivers when they are appointed are not *ipso facto* chargeable with the payment of the rental of all leased lines, not by any means.

The Receivers have a reasonable time to determine whether they will keep leased lines or not. If they are profitable they can keep them; if not, they can turn them away. These Receivers came in and knew the day they were appointed that the Lehigh Valley had cost the Reading a million and a half. They never said anything. They kept right on, and Mr. Wilbur was one of the Receivers. I do not charge him with anything, but it was very improper for him to be one of the Receivers and not come in and ask the Court's instruction under those circumstances. Well, what happened with the Lehigh Valley? Coal purchases went on at the same time from the Lehigh Valley Coal Company. There is no need of going into any detail about them, but they went on simultaneously, and in August the Receivers or the Lehigh Valley (I do not know which it was, for the answer says both) were confronted with the remarkable state of affairs that the Receivers had gone on for six months operating a leased line which in the past

year had cost Reading a million and a half. They had not told the Court a word about it. They had never asked instructions, and probably did not intend to ask instructions. They would have operated it just as long as the Reading purse would last. Now, they had paid to the Lehigh Valley, in defiance of the income mortgage bonds something, as appears from this answer, much to my surprise, in the neighborhood of $1,000,000 in the shape of unearned dividends on Lehigh Valley stock.

Then came this other part of the year during which Lehigh Valley was to make up the loss in the early part, but the Lehigh Valley took that other part of the year for itself, for it abrogated the lease, and it abrogated the lease because the Philadelphia and Reading Coal and Iron Company could not pay $963,000 which it had owed since the beginning of the receivership to the Lehigh Valley Coal Company for coal purchased. That is the reason it abrogated the lease after these Receivers had been paying to the Lehigh Valley Railroad Company $1,000,000 for unearned dividends, notwithstanding the warning they had received not to do it, and without asking the instruction of the Court—all this in the pretended hope that they would be able to make that up in the other half of the year, and yet all this time there existed a debt of $963,000 or more which had been in existence ever since the 20th of February, which the Reading Railroad Company knew it could not pay, and the Receivers knew they could not pay, and for which the Lehigh Valley could at any time have abrogated the lease! That is just what they did. They abrogated it. Now, if anything can be more ridiculous—more painful than the spectacle of these Receivers coming in here, claiming to be such superb business men and laughing at everybody else, and yet presenting that as a businesslike administration—I say nothing about the legal element of it—I do not know it. Well, the lease was abrogated at the petition of the Lehigh Valley. In the answer we learn it was not

at the petition of the Lehigh Valley. The Reading people got sort of tired of it. I cannot make out exactly what that means, but it is here. "Notice was given that it would be impossible for the Receivers to continue to pay even the reduced rental. In reply the officers of the Lehigh Valley requested that they should be allowed to make application for forfeiture of the lease." A sort of mutual arrangement between the two companies that the Lehigh Valley should go off with $1,500,000 the first year and $1,000,000 the second year, and then it got a $1,000,000 worth of coal besides so as to pay its old debt!

Next, we have that remarkable theory about the payment of that coal debt to the Lehigh Valley Coal Company. If that coal was bought by the Reading Railroad Company it belonged to the Reading Railroad Company, I suppose, and the debt due to the Lehigh Valley Railroad or the Lehigh Valley Coal Company was an unsecured debt. Now, I do not see that it made any difference where that coal was stored. It was stored in the name of the railroad company or its fiscal agent, the Finance Company of Pennsylvania, I presume, and it belonged to the Reading Railroad Company. There was no earthly reason why it should be paid to the Lehigh Valley Coal Company except a desire to favor that company.

MR. DICKSON: The purchaser was the Reading Coal and Iron Company.

MR. BIJUR: That is all right. The Coal and Iron Company is in the hands of the same Receivers. Then we hear of a new principle of morality or business honesty, but I think I know something about morality and business honesty, and I do not know why one creditor should be preferred to another. I do not know why that was honest, and I do not know why the Reading Coal and Iron Company, which bought that coal from the Lehigh Valley, should pay that debt to the Lehigh Valley rather than pay its debt to the Reading Railroad Company, or why they did not divide it, or why they did not marshal the assets and marshal the

liabilities, or why they did not ask the instruction of the Court as to what they should do. And I do not know any reason why every one of the creditors of the Philadelphia and Reading Railroad Company should not have gotten some of that. As the Reading Coal and Iron Company owes the Philadelphia and Reading Railroad Company $30,000,000, if the coal company had paid part of its debt to the railroad company, the railroad company would have paid part of its debt to all its creditors. They are entitled to just as much consideration as the Lehigh Valley Coal Company—the great, unrivaled, "good" creditor of the Reading Coal Company. There is something absolutely inexplicable in all this. The only justification these Receivers could have had in the face of the entire business community would have been a ruling of this Court, and that they have never asked for, and I trust they will never be able to get, in approval of such a transaction.

Now, there was another peculiar idea. That is, that the Receivers have nothing to do with anything that happened prior to their appointment. As I understand it, it is the business of a Receiver to take the choses in action as much as the actual physical possessions of the railroad, and it seems to me that if any wrong has been committed prior to the appointment of Receivers, it is their business to investigate it, especially if it occurred four days prior. There was this remarkable preference of Mr. McLeod to himself, the president of the company, preferring his own unsecured debt to himself four days before the Receivers were appointed.

There were certainly grave circumstances of doubt, and the answer shows it, in regard to the ownership of those 320 bonds. The Receivers plead technically that there had been some adjustment between the officers of the company and Mr. McLeod, but it was a very queer adjustment. It was the business of the Receivers to look into it. They have just cut the line right there at their appointment,

and anything that happened before that is taken for granted as one of the misfortunes of this world! But that is not the rule that should govern a Receiver. He wants to investigate. He wants to know the condition of the trust. He wants to know what claims he may have against other people, and he should enforce them.

THEN we come to the most remarkable theory of all —that is, that although this property is in the hands of one of the greatest Courts of this country, and although these great men are in charge of it, Mr. Isaac L. Rice should go around the world bringing actions, if he thinks that there is occasion, and actions in the name of the company. Now, as I understand the rule in a receivership, Mr. Rice should come to this Court and ask this Court to instruct the Receivers. He should be welcomed. The Receivers should appear and say, if anything, "There is no cause for action, because of such and such reasons, and Mr. Rice is wrong." But we are told that Mr. Rice should bring these proceedings, bring them on his own behalf, and they graciously will permit him to do it if he gives indemnity to the company. I do not know that in those other cases that were cited, the company was in the hands of Receivers.

THE COURT: Your application is properly made here. There is no doubt about it. The whole thing is in the hands of the Court, and it is for the Court to see to the interest of the creditors.

MR. BIJUR: Now, may it please the Court, the administration of this property has not brought honor upon the men who administer it, nor has it covered with honor, and that is the pity of it, the Court which appointed the Receivers, because they have not followed the instructions of the Court. I do not say that this has been done willfully. I do not know that this has been done maliciously; but one thing is sure, tremendous acts have been done in the administration of this property regarding which the Court did not and

could not know anything. The Court was deceived. I do not use that in the wrong sense ; but, at least, the Court was not informed of what was going on, and all these matters of which the holders of millions of dollars of securities are complaining to-day, have never been brought before this Court, and we are trying to bring them.

This Reading receivership is acknowledged, we see it here, to be one of the greatest railroad scandals of modern times. Three million dollars of income interest were paid out on the first day of February, and on the 20th the company was in the hands of Receivers because it could not pay $2,750, yet, on the same day millions of assets in the way of securities and $250,000 in cash were put up as margin on a stock speculation. Of course the world thinks, and the world will continue to think, that it was an outrageous short deal, and that this whole Receivership was simply a fraudulent scheme to further it, and a shameful and outrageous collapse. And now instead of the affairs of this company having been ventilated, and honest redress being sought on every hand under the wise guidance, direction and instruction of the Court, all these things have been covered up, and we hear about men coming and saying they could bring three witnesses to something or other, and that the Receivers had to get up a reorganization plan and hurry it through, &c., &c. Of course, all that does not amount to anything, but the Court stands before the world itself, in the eyes of laymen who do not know that the Court cannot personally be running after these Receivers and seeing them every time they pay out a dollar or a million dollars—the Court stands in the eyes of laymen as approving of this transaction, and that is what we protest against, and we want a ruling of the Court upon these matters. We ask nothing for ourselves. We ask for no award. We ask for instructions of the Court and for rulings of the Court upon these questions of grave doubt in the administration of the trust.

Now, I come to the accounts. I do not care what has been done in previous receiverships about accounts. I do know that no sane man can read this account through and tell what the affairs of the Philadelphia and Reading Railroad Company are. He will find the operating expenses for a month to be, say, $900,000. I would like to know whether operating expenses, for instance, include the payment of advertlsing for that plan. Somebody paid to advertise that plan. It must have cost $100,000 to advertise that plan. Did the Receivers do that? The company could not, because the company did not have any money. The company was enjoined from doing anything. The president could not, yet this president went about trying to get that plan through. There is no objection to a president trying to put a plan through; but when he is a Receiver, he ought to be very careful not to mix up those functions. Counsel for the Receivers ought to be very careful not to state in Court that unless the income bond holders, whose consent was not asked, made no objection, and unless the stockholders consented to the voting trust, they would find that foreclosure and the sacrifice of collateral would follow. The president of this trustee gave out a published interview, wherein he stated that no sensible man questioned the wisdom of the plan, and if it were not put through, sacrifice of collateral and foreclosure would follow. Should the Receiver of a company lend himself to put a plan through by which he becomes trustee for seven years under a voting trust with power to re-elect himself? I have not made any great point of it, but it has been brought up here, and I would like to know whether that president was just as careful then as he is now, when he is sending around circulars enclosing proxies to stockholders signed, "Joseph S. Harris, president," asking them to vote for him, and sends them in envelopes marked "Receivers of the Philadelphia and Reading Railroad." Presidents should be very careful when they are Receivers. It was not "some Southern Judge," as Mr.

Dickson put it, that said Receivers ought not to interfere in the reorganization of the company, that they should know no parties, but it was Judge JACKSON, one of the Justices of the United States Supreme Court.

This, may it please the Court, is the gravemen of our complaint, and to this the answer has in no wise made answer. I have spoken of no technical points. I do not think my opponents desire it. I do not want to know who heard Mr. Rice boast about the proxies. I do not think they want to know who told Mr. Rice that 2,500 cars had been ordered under that contract. Those are very small matters. I object to this statement in the answer, because it is a personal attack upon Mr. Rice that has no connection with the matter at issue, just as I object to all other statements made about Mr. Rice, because I do not know any Mr. Rice in this proceeding. He is a bondholder. If they allege this action is not brought in good faith I will bring a million of bonds here into court. Do these gentlemen think we rely upon a holding of $100,000 of bonds? This matter is known all over the world for the reason that you find Reading security holders all over the world, and we submit that we have come here not only in good faith, but that we have come here in order to assist the Court in the administration of a great trust in calling these Receivers to an account, and to take the place which they have been appointed to fill—as servants of the Court and trustees of the security holders.